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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6350 OF 2007

Mr. Nandkumar B. Mali ... Petitioner

V/s

M.S.R.T. Corporation, Sangli. ... Respondent

Mr. M.S.Topkar for the petitioner.

Mr. G.S.Hegde i/by M/s. G.S.Hegde & Associates for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 1ST OCTOBER, 2007.

P.C.:

1. The petition challenges the order passed by the Industrial Court refusing to condone the delay caused in filing the complaint. The complaint was filed under Items 5, 9 & 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act.

2. The complainant - the petitioner herein, was aggrieved by the order passed against him in a departmental enquiry. He, therefore, challenged the disciplinary action and the order passed by filing a complaint being Complaint (ULP) No.131 of 1991 on

29.5.1991. The main grievance of the petitioner is that his services had been wrongly terminated on the allegation that he had concealed his actual date of birth while securing employment with the respondent in 1978. The petitioner contends that his school leaving certificate records an incorrect date as his date of birth and, therefore, the respondent Corporation has committed an illegality by refusing to correct his date of birth in its record in consonance with his birth certificate. The complaint filed by the petitioner was dismissed on 12.6.1996 in view of the judgment reported in **Shramik Utkarsha Sabha v/s Raymond Woollen Mills Ltd., reported in 1995 I C.L.R. 607**, wherein, the Supreme Court has held that complaints alleging unfair labour practices under Items 2 and 6 of Schedule IV are not tenable when filed by an unrecognised Union. According to the Industrial Court, all complaints filed by individual workers were also not tenable, whether filed complaining of unfair labour practices under Items 2 and 6 of Schedule IV or otherwise.

3. The petitioner thereafter approached the Union representing the workers, however, it appears that the Union of which the petitioner was a member, was not a recognised Union. He, therefore, approached the recognised Union which insisted that the petitioner

became its member before filing the complaint. This occurred in 1996 soon after the decision of the Industrial Court. In the year 1997, the learned Single Judge of this Court in the case of **V.D.Dhekale v/s Depot Manager, M.S.R.T.C. Kolhapur & ors., reported in 1997 I C.L.R. 633,** held that individual complaints could be filed by workmen under Items 2 and 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act and other items as well. The petitioner, therefore, filed the present complaint on 15th December, 1997 complaining of unfair labour practices under Items 5, 9 & 10 of Schedule IV. An application for condoning the delay was also filed being Misc. (ULP) No. 13 of 1997 which was later transferred and renumbered as Misc. (ULP) No. 2 of 1997.

4. The Industrial Court has rejected this application by concluding that the petitioner was unable to explain the delay in filing the complaint.

5. In my view, this decision of the Industrial Court is incorrect. The Industrial Court has proceeded on an incorrect premise that the petitioner desires to restore the earlier complaint filed in the year 1991. Although the power to condone the delay is a discretionary jurisdiction vested in the Industrial Court, the discretion must not be exercised arbitrarily or

perversely. The Industrial Court has unjustifiably held that delay has not been explained. The reasons mentioned in the application for condonation of delay, in my view, are sufficient and good reasons for condoning the delay. The petitioner has filed this complaint soon after the judgment in the case of **V.D.Dhekale** (supra).

6. The order of the Industrial Court dated 23.7.2007 is, therefore, set aside.

7. Writ petition allowed. No order as to costs.

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